

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: Michael L. Wherley and
Patti J. Wherley
Debtor

CHAPTER 7

BANKRUPTCY NO.
09-08873-MDF

Select Portfolio Servicing, Inc.,
as Loan Servicer for the Mortgage Holder,
Movant,
v.

11 U.S.C. §362

Michael L. Wherley and
Patti J. Wherley,
Respondent.

Steven M. Carr, Trustee
Additional Respondent.

MOTION OF SELECT PORTFOLIO SERVICING, INC., AS LOAN SERVICER FOR THE
MORTGAGE HOLDER FOR RELIEF
FROM THE AUTOMATIC STAY UNDER §362(d)

Movant, Select Portfolio Servicing, Inc., as Loan Servicer for the Mortgage Holder, hereby moves for relief from the Automatic Stay under §362(d) and by its undersigned counsel avers the following in support of the said Motion:

1. The Debtor, Michael L. Wherley and Patti J. Wherley, filed on November 14, 2009, a Petition under Chapter 7 of the United States Bankruptcy Code in the Middle District of Pennsylvania under the above case number.

2. Movant is holder of a secured claim against the Respondent secured only by a first mortgage lien on real estate which is the principal residence of the Respondent/Debtor located at 4 Berlin Court, York, PA 17408. ("Mortgaged Premises").

3. Additional Respondent is the Standing Trustee appointed in this Chapter 7 proceeding.

4. The filing of the Petition operated as an Automatic Stay under §362(a) of the U.S. Bankruptcy Code of proceedings to foreclose on the mortgage held by Movant on the Mortgaged Premises. Movant requests modification of the Automatic Stay to continue with the filed mortgage foreclosure action, if any.

5. The Debtor has failed to make payments to discharge the arrearages on said mortgage and has failed to make the current monthly mortgage payments on said mortgage since the filing of the Chapter 7 Petition.

6. The Debtor has failed to tender any monthly mortgage payments to the Movant since August 1, 2009. Said default includes the Respondent's failure to make the following monthly payments and late charges :

Four (4) monthly mortgage payments of \$725.21 from August 1, 2009 through November 23, 2009	\$2,900.84
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Attorneys' fees of \$550.00 incurred in the legal representation of Movant in this proceeding and filing costs of \$150.00	700.00
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TOTAL AMOUNT DUE CONTRACTUALLY	\$3,600.84
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7. The itemization of the total amount owed on this loan through November 19, 2009 are as follows:

Principal Balance	\$102,239.37
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Accrued Interest due from July 1, 2009 through November 19, 2009 at 7.375%	2,880.22
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Accrued Late Charges	108.78
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Recoverable Corporate Advances	13.85
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Attorneys' fees of \$550.00 incurred in the legal representation of Movant in this proceeding and filing costs of \$150.00	700.00
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TOTAL PAY-OFF AMOUNT DUE	\$105,942.22
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October 9, 2009, which evidences the "as-is-value" of the Mortgaged Premises as \$162,000.

9. A liquidation analysis of the Debtors' property subject to the lien of Movant's mortgage is as follows:

Fair Market Value	\$162,000.00
10% cost of sale	<16,200.00>
Amounts due on Movant's Mortgage	<105,942.22>
NET EQUITY	\$39,857.78

10. The Movant is entitled to relief from the Automatic Stay because of the foregoing default and because:

(a) Movant, as a holder of the first mortgage lien securing a debt owed by each Respondent, lacks adequate protection for its interests in the Mortgaged Premises;

11. (a) F.R.B.P. Rule 4001(a)(3) provides that "[a]n order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, **unless the court orders otherwise**" [emphasis added].

(b) In this instance, the Movant respectfully requests that the Relief Order issued by this Honorable Court contain language which expressly provides that Movant is not bound by the 10-day stay period, and that it may immediately upon entry of the Relief Order, act upon same.

WHEREFORE, the Movant, Select Portfolio Servicing, Inc., as Loan Servicer for the Mortgage Holder, respectfully requests relief from the Automatic Stay under §362 of the Bankruptcy Code insofar as it stays foreclosure of Movant's interests in the Mortgaged Premises in the state courts.

Respectfully Submitted,

THE LAW OFFICES OF BARBARA A. FEIN, P.C.

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